

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



CALAMAR CAPITAL SERVICES, LLC, N.A.
REALTY FUND II, LLC, and INDICAL
PARTNERS, LLC,

Plaintiffs,

24-CV-684 (JLS) (LGF)

v.

BCMK INVESTMENT HOLDINGS, LLC,
BRENT E. CAREY, and INDIGO GLOBAL
ADVISORS, LLC,

Defendants.

DECISION AND ORDER

Plaintiffs Calamar Capital Services, LLC, N.A. Realty Fund II, LLC, and Indical Partners, LLC (collectively, "Plaintiffs") commenced this action in state court alleging, *inter alia*, breach of contract claims. *See* Dkt. 1-3. Defendants BCMK Investment Holdings, LLC, Brent E. Carey, and Indigo Global Advisors, LLC (collectively, "Defendants") filed a notice of removal on July 22, 2024. Dkt. 1. Defendants then filed a motion to dismiss on July 29, 2024. Dkt. 7. Plaintiffs responded (Dkt. 18), and Defendants replied. Dkt. 24.

On December 18, 2024, Plaintiffs' formal counsel, Anthony J. Colucci III and Paul G. Joyce (both attorneys at Colucci & Gallaher, P.C.), moved to withdraw as

Plaintiffs' counsel. Dkt. 25. Judge Foschio¹ granted the motion and gave Plaintiffs forty-five days to retain new counsel. Dkt. 35. But no new counsel appeared on Plaintiffs' behalf.

On May 29, 2025, Judge Foschio ordered Plaintiffs to show cause as to why the Court should not dismiss this action for failure to prosecute. *See* Dkt. 37. Plaintiffs failed to respond, and no new counsel entered an appearance on their behalf. Defendants subsequently filed a letter on June 24, 2025, requesting that the Court dismiss this action. Dkt. 38

On June 26, 2025, Judge Foschio issued a Report and Recommendation ("R&R"), recommending that the Court dismiss this action for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b). Dkt. 39, at 6. Neither party filed objections.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, and accepts and adopts Judge Foschio's recommendation.

¹ This Court referred the case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 8.

For the reasons stated above, and in the R&R, the Court DISMISSES this action for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b). The Clerk of Court is directed to close this case and to send a copy of this order to Plaintiffs Calamar Capital Services, LLC, N.A. Realty Fund II, LLC, and Indical Partners, LLC, Attn: Cheryl Green, Corporate General Counsel, 3949 Forest Parkway, Suite 100, Wheatfield, New York 14120.

SO ORDERED.

Dated: July 18, 2025
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE